

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of The City of Eureka to construct new temporary crossing improvements in the field West of Bayshore Mall in the City of Eureka.

Application 15-12-025
(Filed December 21, 2015)

DECISION AUTHORIZING THE CITY OF EUREKA TO CONSTRUCT A NEW TEMPORARY AT-GRADE PEDESTRIAN-RAIL CROSSING OVER THE NORTH COAST RAILROAD AUTHORITY TRACK WEST OF BAYSHORE MALL IN THE CITY OF EUREKA, COUNTY OF HUMBOLDT**Summary**

This decision grants the City of Eureka authorization to construct a new temporary at-grade pedestrian crossing over the North Coast Railroad Authority track west of Bayshore Mall in the City of Eureka, Humboldt County. The crossing will be identified as Bayshore pedestrian crossing, California Public Utilities Commission Crossing Number 104-282.04-D and United States Department of Transportation Number 969556W.

This proceeding is closed.

Discussion

The City of Eureka (City) requests authority to construct a new temporary at-grade pedestrian crossing (crossing) over the North Coast Railroad Authority (NCRA) track in the City, Humboldt County. The single track crossing will be a 10-foot wide asphalt pathway that crosses the track at an approximate 80-degree angle. There is no rail service on this portion of the NCRA line.

The City states that the purpose of the project is to provide improved public access from the Hiksari' Trail to the Old Town region of Eureka, a critical part of the California Coastal Trail. The City also proposes that this crossing authorization will expire at such time as NCRA resumes rail service at this location. At that time, the City must request the California Public Utilities Commission (Commission), by a formal application, to keep the crossing in place. Additionally, a new diagnostic review including the City, NCRA, and Commission staff will be required to determine the configuration of the new crossing.

The City will include the following features in the construction of the crossing:

- 10-foot wide asphalt crossing surface for the track, laid flush with the top of the rails;
- Americans with Disabilities Act (ADA) compliant detectable warning tactile strips on both approaches, located a minimum of 12 feet from the centerline of the track;
- Two curb-mounted Commission Standard 1-R (crossbuck sign on a post) warning devices;
- Commission Standard 1-D "RAILROAD CROSSING AND BICYCLES ONLY" and California Manual on Uniform Traffic Control Devices (CA MUTCD) R1-2 "YIELD" signs on each warning device; and
- A CA MUTCD W10-1 "RXR" railroad advance warning sign, W10-12 skewed crossing sign, and pavement markings in each approach direction.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (as amended, Public Resources Code Section 21000, et seq.) (CEQA) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities. Since the project is subject to CEQA and the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission has the exclusive authority to approve the project pursuant to Section 1202 of the Public Utilities Code), the Commission must consider the environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is either the public agency that carries out the project,¹ or the one with the greatest responsibility for supervising or approving the project as a whole.² Here, the City is the lead agency under CEQA for this project because it prepared the environmental documents, and the Commission is a responsible agency because it has jurisdiction to issue a permit for the project. As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving this project.³ Also, as a responsible agency, the Commission is responsible for

¹ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

² CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

³ CEQA Guidelines, Sections 15050(b) and 15096.

mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry-out, finance, or approve.⁴

On October 24, 2014, the City filed a Notice of Determination (NOD) with the Humboldt County Clerk which states that "The project will not have a significant effect on the environment." The City also adopted a Mitigated Negative Declaration (MND) for the project. The City adopted mitigation measures and a mitigation measure monitoring and reporting program as a condition of approval of the project.

The City also determined that no environmental documentation was required under the National Environmental Policy Act (NEPA), pursuant to a federal regulation that excludes the construction of bicycle and pedestrian lanes, paths, and facilities, from review. On November 13, 2014, the City filed a Categorical Exemption/ Categorical Exclusion Determination Form (CE/CED) which states:

The State has determined that this project has no significant impacts on the environment as defined by NEPA, and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. The State has been assigned, and hereby certifies that it has carried out the responsibility to make this determination pursuant to Chapter 3 at Title 23, United States Code, Section 326 and a Memorandum of Understanding dated June 07, 2013, executed between the FHWA⁵ and the State. The State has determined that

⁴ CEQA Guideline Section 15096(g).

⁵ Federal Highway Administration.

the project is a Categorical Exclusion under: 18123 CFR 771.117(c): activity (c) (3).

Impacts identified under CEQA relating to the construction and implementation of the crossing aspect of the project are within the scope of the Commission's jurisdiction. The NOD, MND, and CE/CED did not identify any significant impacts associated with the rail-crossing aspect of this project.

The Commission reviewed and considered the City's NOD, MND, and CE/CED as these documents relate to this at-grade crossing and finds these documents adequate for our decision-making purposes.

Filing Requirements and Staff Recommendations

This application is in compliance with the Commission's filing requirements including Rule 3.7 of the Rules of Practice and Procedure, which relates to the construction of a public road across a railroad.

The Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch has inspected the site of the proposed crossing, reviewed and analyzed the plans submitted with the application, and recommends that the requested authority to construct the subject at-grade pedestrian-rail crossing be granted for a period of three years.

Categorization and Need for Hearings

In Resolution ALJ 176-3370, dated January 14, 2016, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, it is not necessary to disturb the preliminary determinations.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Elizaveta I. Malashenko is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on January 5, 2016.
2. The City requests authority, under Public Utilities Code Sections 1201-1205, to construct a crossing over the NCRA track in the City, Humboldt County. The crossing will be identified as Bayshore crossing, California Public Utilities Commission Crossing Number 104-282.04-D and United States Department of Transportation Number 969556W.
3. The crossing design and construction will conform to ADA requirements.
4. The City is the lead agency for this project under CEQA.
5. On October 24, 2014, the City filed an NOD with the Humboldt County Clerk which states that "The project will not have a significant effect on the environment." The City adopted an MND for the project.
6. The City adopted mitigation measures and a mitigation measure monitoring and reporting program as a condition of approval of the project.

7. On November 13, 2014, the City filed a CE/CED which states that “The State has determined that this project has no significant impacts on the environment as defined by NEPA.”

8. Impacts related to the construction and implementation of the crossing aspect of the project is within the scope of the Commission’s permitting process.

9. None of the environmental documents identified any significant impacts associated with the at-grade pedestrian-rail crossing aspect of the project.

10. The proposed at-grade pedestrian-rail crossing will provide improved public access from the Hiksari’ Trail to the Old Town region of Eureka, a critical part of the California Coastal Trail.

Conclusions of Law

1. Impacts related to the construction and implementation of the crossing aspect of the project, which may include, for instance, safety, traffic/transportation, and noise impacts are areas within the scope of the Commission’s permitting process.

2. The Commission is a responsible agency for this project and has reviewed and considered the lead agency’s NOD, MND, and CE/CED.

3. The NOD, MND, and CE/CED are adequate for our decision-making purposes.

4. The NOD, MND, and CE/CED prepared by the City were completed in compliance with CEQA and NEPA.

5. The NOD, MND, and CE/CED reflect the Commission’s independent judgment and analysis.

6. The NOD, MND, and CE/CED did not identify any significant impacts relating to the at-grade pedestrian-rail crossing aspect of the project.

7. The application is uncontested and a public hearing is not necessary.
8. The application should be granted as set forth in the following Order.
9. The proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The City of Eureka is authorized to construct a new temporary at-grade pedestrian crossing over the North Coast Railroad Authority track at milepost 282.04 in the City of Eureka in Humboldt County.
2. The new Bayshore at-grade pedestrian-rail crossing shall have the crossing treatments and configuration described in this decision and specified in the City of Eureka's application and its attachments and addendum. The new Bayshore at-grade pedestrian-rail crossing shall be identified as California Public Utilities Commission Crossing Number 104-282.04-D and United States Department of Transportation Number 969556W.
3. North Coast Railroad Authority shall ensure that Emergency Notification Systems Signs are installed to comply with Title 49, Code of Federal Regulation Section 234.309.
4. The City of Eureka shall notify the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch at least five (5) business days prior to opening the at-grade highway-rail crossing. Notification must be made to rceb@cpuc.ca.gov.
5. Within 30 days after completion of the work under this order, the City of Eureka shall notify the Rail Crossings and Engineering Branch in writing, by submitting a completed California Public Utilities Commission Standard Form G (*Report of Changes at Highway Grade Crossings and Separations*), of the completion

of the authorized work, including the crossing closures. Form G requirements and forms can be obtained at the California Public Utilities Commission web site Form G page at <http://www.cpuc.ca.gov/Crossings>. This report may be submitted electronically to rceb@cpuc.ca.gov.

6. Within 30 days after completion of the work under this order, North Coast Railroad Authority shall notify the Federal Railroad Administration of the existence of the public at-grade pedestrian-rail crossing by submitting a United States Department of Transportation CROSSING INVENTORY FORM, form FRA F6180.71 for the crossing. Concurrently North Coast Railroad Authority shall provide a copy of the inventory form to the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch. This copy of the form may be submitted electronically to rceb@cpuc.ca.gov.

7. The City of Eureka shall comply with all applicable rules, including California Public Utilities Commission General Orders, the United States Department of Transportation's Americans with Disabilities Act Standards for Transportation Facilities and the California Manual on Uniform Traffic Control Devices.

8. The City of Eureka has three years to exercise the authority to construct the Bayshore pedestrian-rail crossing, unless time is extended if the above conditions specified in Ordering Paragraphs 2 through 7 are not satisfied. The California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so requires.

9. A request for extension of the three-year authorization period must be submitted to the California Public Utilities Commission's Safety and

Enforcement Division, Rail Crossings and Engineering Branch at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties

10. This temporary crossing authorization shall expire at such time as the North Coast Rail Authority or its leaser or other designee resumes rail service at this location. Before rail service resumes, the rail service operator shall close the pedestrian crossing.

11. If the City of Eureka (City) elects continuation of the pedestrian crossing in the event of commencement of rail service, it must request by formal application, prior to the commencement of rail service, approval from the California Public Utilities Commission to keep the crossing open. The City's application must take into consideration the specifics of pending rail service at the location of the crossing.

12. The application is granted as set forth above.

13. Application 15-12-025 is closed.

14. This order is effective today.

Dated _____, at San Francisco, California.